



FH
[REDACTED]

STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of

[REDACTED]
[REDACTED]
[REDACTED]

DECISION

BCS/170117

PRELIMINARY RECITALS

Pursuant to a petition filed November 13, 2015, under Wis. Stat. § 49.45(5)(a), to review a decision by the Waupaca County Department of Social Services in regard to Medical Assistance, a hearing was held on December 22, 2015, at Waupaca, Wisconsin.

The issues for determination are whether this appeal is timely as to a September 1, 2015 BadgerCare+ case closure for failing to complete a review and whether the agency correctly denied BadgerCare+ eligibility following a review.

There appeared at that time and place the following persons:

PARTIES IN INTEREST:

Petitioner:

[REDACTED]
[REDACTED]
[REDACTED]

█
█

Respondent:

Department of Health Services
1 West Wilson Street, Room 651
Madison, Wisconsin 53703

By: Kathy Hobbs

Waupaca County Department of Social Services
811 Harding Street
Waupaca, WI 54981-2087

ADMINISTRATIVE LAW JUDGE:

David D. Fleming
Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner (CARES # [REDACTED]) is a resident of Waupaca County.
2. Petitioner and her family were BadgerCare+ eligible and the case subject to review by the end of August 2015. She was sent a notice dated July 13, 2015 that indicated that the review had to be

completed by August 31, 2015 and if not complete, including all necessary verifications, benefits could be delayed.

3. Petitioner contends that she completed a review on August 2, 2015 but the agency does not have a record of that.
4. Petitioner was sent a Notice of Decision dated August 19, 2015 that informed her that her BadgerCare+ case would close on August 31, 2015 for failure to complete a review. That notice has appeal instructions and noted an appeal deadline of October 19, 2015.
5. Petitioner completed the review online on August 27, 2015. The agency processed Petitioner's review on September 2, 2015 and sent Petitioner a request for verification dated September 2, 2015. The verification was due September 11, 2015 but received by the agency on September 14, 2015.
6. The agency reviewed Petitioner's financial verification and determined that she and her spouse were not BadgerCare+ eligible as their income was in excess of the 100% of the Federal Poverty Level income limit for adults. A Notice of Decision dated September 14, 2015 was sent to Petitioner's household that indicated that Petitioner and her husband were not BadgerCare+ eligible as of October 1, 2015. The income noted on the Notice totaled \$4235.20. The appeal deadline is noted on the September 14, 2015 Notice and was November 16, 2015.
7. Petitioner's household size is 4. 100% of the Federal Poverty level for a group of 4 is \$2020.83.
8. This appeal was filed on November 13, 2015.

DISCUSSION

In order for the Division of Hearings and Appeals to have authority to make a determination on the merits of a matter it must have authority to do so. It does not have authority where an appeal is untimely. A timely hearing request concerning Medical Assistance matters, including BadgerCare+, must be filed within 45 days of the notice of the county agency decision. §49.45(5)(a), *Wis. Stats.* This appeal was filed with the Division of Hearings and Appeals past the October 19, 2015 deadline for an appeal of the notice indicating that Petitioner's case would close for lack of a review.

Petitioner contends that because she completed the review she assumed the August 19, 2015 closure notice did not apply so did not appeal. That is, however, the very reason for appeal rights – to challenge a negative action. To decide there is no need to appeal is to rule on your own case. The Division of Hearings and Appeals have no authority to expand the appeal deadline; thus this appeal is untimely as to the September 2015 discontinuance. I also note that the review was not, in fact, complete until all verification was received which was in mid-September.

As for the determination that Petitioner was not BadgerCare+ eligible upon completion of the review, the appeal is timely. BadgerCare+ can be backdated up to 3 months but only if the person whose case was reviewed was eligible. *See BadgerCare+*, §26.1.2. The issue here becomes whether Petitioner and her spouse were financially eligible for BadgerCare+ back to September 1, 2015.

BadgerCare+ is Wisconsin's Medicaid program for those who are not elderly or disabled. Effective April 1, 2014, Wisconsin state law changed and lowered the amount of adjusted gross income a household can have and still be eligible for benefits to 100% of the Federal Poverty Level for adults and 300% for children. *Wis. Stat. § 49.471(4)(a)*. This change was to be effective January 1, 2014 but was held off until April 1 to assure coordination with other changes in healthcare options; especially the Affordable Care Act. 100% of the Federal Poverty Level for a 4 person household was \$2020.83 per month as of February 1, 2015. *BadgerCare+ Eligibility Handbook (BEH)*, §50.1.

Under modified adjusted gross income rules the following deductions form page 1 of Federal Tax Form 1040 are allowed:

1. Student Loan Interest
 2. Higher Education Expenses
 3. Self-employment Tax Deduction
 4. Spousal Support, Alimony or Maintenance
 5. Teachers' Tax-Deductible Expenses
 6. Self-employed SEP, Simple or Qualified Plan Contributions
 7. Penalties for Early Withdrawal of Funds
 8. Performing Artists Tax-deductible Expenses
 9. Military Reserve Members' Tax-deductible Expenses
 10. Out-of-pocket Costs for a Job-related Move
 11. Loss from Sale of Business Property
 12. Individual Retirement Account (IRA) Contributions
 13. Fee-based Official Tax-deductible Expenses
 14. Domestic Production Activities Deduction
 15. Allowable Write-in Expenses
- See BEH, §16.3.3.*

Further, the following pretax payroll deductions are allowed:

1. Health Insurance premium payments, including pre-tax premium payments for medical, dental or vision plans
 2. Health Savings Account (including flexible spending accounts) contributions
 3. Retirement contributions
 4. Parking & Transit costs
 5. Child Care Savings Account contributions
 6. Group Life Insurance premium payments
- See BEH, §16.3.2.*

There is no evidence that these deductions are involved here. Here Petitioner's children were found eligible but Petitioner and her spouse were determined to be over the income limit. The income limit for adults in a group of 4 was \$2020.83 as of February 1, 2015. As noted at Finding #4, Petitioner's household income is in excess of that figure.

Finally, Petitioner notes that that a September 2015 medical procedure was prior authorized and should be paid for by BadgerCare+ Medicaid. An authorization for a medical service means that the service is a coverable service not that the individual was financially or otherwise eligible.

CONCLUSIONS OF LAW

That Petitioner's appeal is untimely as to a September 1, 2015 discontinuance of BadgerCare+ and eligibility cannot be backdated to September 1, 2015 because Petitioner was not financially eligible.

THEREFORE, it is

ORDERED

That this appeal is dismissed.

REQUEST FOR A REHEARING

You may request a rehearing if you think this decision is based on a serious mistake in the facts or the law or if you have found new evidence that would change the decision. Your request must be **received within 20 days after the date of this decision**. Late requests cannot be granted.

Send your request for rehearing in writing to the Division of Hearings and Appeals, 5005 University Avenue, Suite 201, Madison, WI 53705-5400 **and** to those identified in this decision as "PARTIES IN INTEREST." Your rehearing request must explain what mistake the Administrative Law Judge made and why it is important or you must describe your new evidence and explain why you did not have it at your first hearing. If your request does not explain these things, it will be denied.

The process for requesting a rehearing may be found at Wis. Stat. § 227.49. A copy of the statutes may be found online or at your local library or courthouse.

APPEAL TO COURT

You may also appeal this decision to Circuit Court in the county where you live. Appeals must be filed with the Court **and** served either personally or by certified mail on the Secretary of the Department of Health Services, 1 West Wilson Street, Room 651, Madison, Wisconsin 53703, **and** on those identified in this decision as "PARTIES IN INTEREST" **no more than 30 days after the date of this decision** or 30 days after a denial of a timely rehearing (if you request one).

The process for Circuit Court Appeals may be found at Wis. Stat. §§ 227.52 and 227.53. A copy of the statutes may be found online or at your local library or courthouse.

Given under my hand at the City of Milwaukee,
Wisconsin, this 2nd day of February, 2016

\sDavid D. Fleming
Administrative Law Judge
Division of Hearings and Appeals



State of Wisconsin\DIVISION OF HEARINGS AND APPEALS

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The preceding decision was sent to the following parties on February 2, 2016.

Waupaca County Department of Social Services
Division of Health Care Access and Accountability